



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,145	03/08/2005	Andrew Webb	54593/312539	9511

23370 7590 06/20/2006

JOHN S. PRATT, ESQ  
KILPATRICK STOCKTON, LLP  
1100 PEACHTREE STREET  
ATLANTA, GA 30309

EXAMINER

BENNETT, GEORGE B

ART UNIT	PAPER NUMBER
----------	--------------

2859

DATE MAILED: 06/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

32

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/527,145	WEBB ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	G. Bradley Bennett	2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>2</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-8 and 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Potter in view of Peters.
3. Potter discloses the invention substantially as claimed. Potter discloses a measuring means **14** with a tape **24** that can be extend; the tape has a locking device **4**; the tape has a cross-section as claimed; the indicia are means for detecting and displaying the length of the tape; and, in it's unassembled state, the Potter device is a kit. However, Potter does not disclose the pendulum device as claimed. Peters discloses how a telescoping pendulum **15** hung by a ball joint may be used for the purpose of indicating and marking a surface when a measuring device is plumb. Therefore, it would have been obvious at the time the invention was made to use the pendulum taught by Peters in conjunction with or in place of the bubble levels of Potter as an alternative means of determining when something is plumb using the Potter device.
4. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Potter and Peters as applied to claim 8 above, and further in view of Wopschall.
5. Potter and Peters disclose the invention substantially as claimed. However, neither Potter nor Peters disclose two tape holders independently movable about the same axis as claimed.

Art Unit: 2859

Wopschall discloses how two tape measures pivotable about the same axis may be used for the purpose of taking a plurality of measurements simultaneously (see FIG 2, for example).

Therefore, it would have been obvious at the time the invention was made to use two tape measures as taught by Wopschall in conjunction with the combination of Potter and Peters for the purpose of allowing a plurality of measurements to be taken simultaneously using the combined device.

6. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Potter and Peters as applied to claim 1 above, and further in view of Bauer.

7. Potter and Peters disclose the invention substantially as claimed. However, neither Potter nor Peters disclose to include a wall bracket able to retain the free end of a tape as claimed.

Bauer discloses how a tape measure and a bracket can be used together for the purpose of aligning the bracket in a proper position (see col. 7, l. 59 through col. 8, line 8). Furthermore, the bracket can inherently retain the free end of the tape, since it is known that the purpose of the hook at the free end of tape measures is for attaching the tape to an object to be measured.

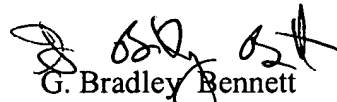
Therefore, it would have been obvious at the time the invention was made to provide a bracket as taught by Bauer in conjunction with the combination of Potter and Peters for the purpose of allowing a person to proper align a bracket in a specific location.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to G. Bradley Bennett whose telephone number is 571.272.2237.

The examiner can normally be reached on M-TH 8:30-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on 571.272.2245. The fax phone number for the organization where this application or proceeding is assigned is 571.273.8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866.217.9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800.786.9199 (IN USA OR CANADA) or 571.272.1000.

  
G. Bradley Bennett  
Primary Examiner  
Art Unit 2859

gbb  
15 JUN 2006